**PROVIDER AGREEMENT**

**BY AND BETWEEN**

**MAYOR AND CITY COUNCIL OF BALTIMORE**

**AND**

**PROVIDER’S LEGAL NAME**

**THIS AGREEMENT** (this “Agreement”) is entered into this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by and between the **MAYOR AND CITY COUNCIL OF BALTIMORE**, a municipal corporation of the State of Maryland, acting by and through the Provide Specific Department/Agency (the “City”) and **PROVIDER’S LEGAL NAME**, a sole proprietorship / limited liability company / corporation formed / registered and in good standing in the State of Maryland (the “Provider”).

**RECITALS**

**WHEREAS**, the City has a need for a provider to Provide a general statement on behalf of the Provide Specific Department/Agency (the “Department”); and

**WHEREAS,** the Provider is qualified to render such services; and

**WHEREAS**, the City hereby wishes to engage the services of the Provider and the Provider has agreed to provide the services described herein to the City.

**NOW, THEREFORE,** in consideration of the foregoing and the respective representations, warranties, covenants, and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **PURPOSE:**
   1. The purpose of this Agreement is for the Provider to Provide a brief description (“Project”).
2. **SCOPE OF SERVICES:** 
   1. The Provider shall provide services as described in the scope of services which is attached hereto at **Exhibit A** and made part of this Agreement.
3. **PROFESSIONAL RESPONSIBILITY:** 
   1. The Provider shall exercise independent professional judgment and shall assume professional responsibility for all services provided hereunder.
   2. The Provider warrants that he/she/it is authorized by law to engage in the performance of the services of this Agreement. The Provider warrants that he/she/it has secured all required licenses and certifications to provide services under this Agreement.
4. **TERM:**
   1. The term (“Term”) of this Agreement will commence immeditately upon the date of approval by the Board of Estimates of Baltimore City (the “Board”) and will terminate \_\_\_\_\_\_ (\_\_\_) years thereafter, with an option to renew this Agreement for \_\_\_\_\_ (\_\_) additional \_\_\_\_\_ (\_\_) year terms on the same terms and conditions, to be exercised at the sole discretion of the City.
5. **COMPENSATION:**
   1. Reimbursement.
      1. The Provider shall provide the services agreed to in this Agreement as identified in **Exhibit A** for a total cost (including fees and expenses) not to exceed  **Dollars ($.00)**. The Provider shall be reimbursed according to the budget in **Exhibit B**, attached hereto and incorporated herein. The Provider agrees that all expenditures are to be made in accordance with the terms and conditions of the funding source identified in **Exhibit C**, attached hereto and incorporated herein.
      2. Payment in excess of the amount set forth above will not be made unless there is a mutually agreed upon change in the scope of services which requires an increase in the total Project cost. Such an increase in the total Project cost will only occur through a written amendment to this Agreement which is approved by the parties and the Board.
   2. Payment.
      1. The Provider shall submit invoices monthly to the City for work performed under this Agreement. Each invoice shall show the services performed and expenses, if any, related to work performed up until the time of invoice submission. Expenses shall include transportation (train, air, taxi, mileage, tolls, and parking), lodging, meals, reproduction costs, and miscellaneous expenses to the extent allowable by the City according to the requirements of its Administrative Manual. Invoices will be structured in a format that is approved by the City.
      2. City shall make its best efforts to pay the Provider for approved invoices within thirty (30) days of receipt of the invoices for work satisfactorily performed by the Provider. Under no circumstances shall the City be required to pay any interest or additional charges of any kind whatsoever.
6. **INSURANCE:**
   1. The Provider shall procure and maintain the following specified insurance coverage during the entire life of this Agreement, including extensions thereof.
      1. Professional Liability, Errors, and Omissions Insurance, at a limit of not less than Three Million Dollars ($3,000,000) per occurrence in the event that service delivered pursuant to this Agreement, either directly or indirectly, involves professional services. If coverage is purchased on a “claims made” basis, the Provider warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period from the date of contract termination, and/or conversion from a “claims made” form to an “occurrence” coverage form. Additionally, a three (3) year extended reporting period is required for those policies written on a “Claim’s Made Basis”. Said policy shall be required in the event the services performed, pursuant to this Agreement, either directly or indirectly, involve or require professional services.
      2. Technology Liability, Errors, and Omissions Insurance, with annual, aggregate limits of no less than One Million Dollars ($1,000,000), pertaining to programming errors, software performance, and performance failures rendered by the Provider or its agents or employees. If coverage is purchased on a “claims made” basis, the Provider warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period from the date of contract termination, and/or conversion from a “claims made” form to an “occurrence” coverage form. Additionally, a three (3) year extended reporting period is required for those policies written on a “claims made basis”. Said policy shall be required in the event the services performed, pursuant to this Agreement, either directly or indirectly, involve or require technology related services.
      3. Cyber Liability Insurance including but not limited to Network Privacy, Technology, Security, Web-Media Services, Breach Containment, Technology Extortion, and Data Restoration, at a limit of not less than One Million Dollars ($1,000,000) per occurrence with an aggregate limit of One Million Dollars ($1,000,000) is required. If coverage is purchased on a “claims made” basis, the Provider warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period from the date of contract termination, and/or conversion from a “claims made” form to an “occurrence” coverage form. Additionally, a three (3) year extended reporting period is required for those policies written on a “Claim’s Made Basis”. Said policy shall be required in the event the services performed, pursuant to this Agreement, either directly or indirectly, involve or require technology related services.
      4. Workers’ Compensation coverage as required by the State of Maryland or other applicable State’s law.
      5. Commercial General Liability Insurance, at a limit of not less than One Million Dollars ($1,000,000) per occurrence for claims arising out of bodily injuries or death, and property damages, including products and completed operations coverage. For those policies with aggregate limits, a minimum limit of One Million Dollars ($1,000,000) is required. Such insurance shall include contractual liability insurance.
      6. Business Automobile Liability at limits of not less than One Million Dollars ($1,000,000) per occurrence for claims arising out of bodily injuries or death, and property damages. The insurance shall apply to any owned, non-owned, leased or hired automobiles used in the performance of this Agreement.
   2. The Provider’s insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer’s liability.
   3. To the extent of the Provider’s negligence, the Provider’s insurance coverage shall be primary insurance as respects the City, its elected/appointed officials, employees, and agents. Any insurance and/or self-insurance maintained by the City, its elected/appointed officials, employees, or agents shall not contribute with the Provider’s insurance or benefit the Provider in any way.
   4. Required insurance coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to the City. There will be an exception for non-payment of premium, which is ten (10) days’ notice of cancellation.
   5. Unless otherwise approved by the City, insurance is to be placed with insurers with a Best’s rating of no less than A:VII, or, if not rated with Best’s, with minimum surpluses the equivalent of Best’s surplus size VII and said insurers must be licensed/approved to do business in the State of Maryland.
   6. The Mayor and City Council of Baltimore, its elected/appointed officials, employees, and agents shall be covered, by endorsement, as additional insured as respects to liability arising out of activities performed by or on behalf of the Provider in connection with this Agreement.
   7. The Provider shall furnish to the City a “Certificate of Insurance”, with a copy of the additional insured endorsement as verification that coverage is in force. The City reserves the right to require complete copies of insurance policies at any time.
   8. Failure to obtain insurance coverage as required or failure to furnish Certificate(s) of Insurance or complete copies as required shall be a default by the Provider under this Agreement.
   9. Notwithstanding anything to the contrary in any applicable insurance policy, the Provider expressly warrants, attests and certifies that there are no carve outs or exclusions to the policy coverage and limitations stated herein, except as required by law.
7. **INDEMNIFICATION:**
   1. The Provider shall indemnify, defend and hold harmless the City, its elected/appointed officials, employees, and agents from any and all claims, demands, liabilities, losses, damages, fines, fees, penalties, costs, expenses, suits, and actions, including attorneys’ fees and court costs, connected therewith, brought against the City, its elected/appointed officials, employees, and agents, arising as a result of: (a) breach of the Provider's representations, warranties, covenants, or agreements under this Agreement; (b) the Provider’s violation or breach of any federal, state, local, or common law, regulation, law, rule, ordinance, or code, whether presently known or unknown; (c) breach of the Provider’s confidential obligations, including data security and privacy obligations; (d) any claim that the intellectual property provided by the Provider within the scope of this Agreement infringes any patent, copyright, trademark, license or other intellectual property right; and (e) any direct or indirect, willful, negligent, tortious, intentional, or reckless action, error, or omission of the Provider, its officers, directors, employees, agents, or volunteers in connection with the performance of this Agreement, whether such claims are based upon contract, warranty, tort, strict liability or otherwise. This requirement shall be included in all subcontractor or subconsultant agreements.
   2. The City shall have the right to control the defense of all such claims, lawsuits, and other proceedings. In no event shall the Provider settle any such claim, lawsuit or proceeding without City’s prior written approval. In the event of any liability claim against the City, its elected/appointed officials, employees and agents, the Provider shall not seek to join the City, its elected/appointed officials, employees, or agents in such action or hold such responsible in any way for legal protection of the Provider.
   3. The obligations of this Section shall survive the expiration or earlier termination of this Agreement.
8. **TERMINATION:**
   1. Termination for Cause. If the Provider shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Provider shall violate any of the representations, warranties, covenants, terms or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement, provided the Provider has failed to cure such violation within ten (10) days after receiving written notification from the City. The Provider will receive compensation for actual services performed and actual expenses incurred for any approved invoices related to work completed prior to such termination pursuant to the terms of this Agreement. Notwithstanding the above, the Provider shall not be relieved of liability to City for damages sustained by the City by virtue of any breach of this Agreement.
   2. Termination for Convenience. The City shall have the right to terminate this Agreement at any time during the Term of this Agreement, for any reason, including without limitation, its own convenience, upon thirty (30) days prior written notice to the Provider. If this Agreement is so terminated and the Provider shall not have been in default, the Provider will be compensated for all work accomplished, but not yet paid for, in accordance with the provisions of this Agreement. The Provider will not receive any further payments under this Agreement.
   3. Appropriations. The payment of invoices and any amounts due the Provider under this Agreement is contingent upon the proper appropriation of funds by the Baltimore City Council in accordance with the Baltimore City Charter and Code. If funds are not appropriated for payment under this Agreement, the City may terminate this Agreement without the assessment of any charges, fees or financial penalties against the City by providing written notice of intent to terminate to the Provider. The Provider shall not begin any additional work or services related to this Agreement upon receipt of notification of intent to terminate by the City.
9. **RETENTION OF RECORDS:**
   1. The Provider shall retain and maintain all records and documents relating to this Agreement for a minimum of three (3) year**s [change to six (6) years if any health care service record involved]** from the date of final payment under this Agreement or pursuant to any applicable statute of limitations, whichever is longer, except in cases where unresolved audit questions require retention for a longer period as determined by the City. The Provider shall make such records and documents available for inspection and audit at any time to authorized representatives of the City, and if applicable to state and/or federal government authorized representatives. If the Provider should cease to exist, custody of all records related to this Agreement will be transferred to the City.
   2. The Provider agrees to establish and maintain on a current basis:
      1. General Journal;
      2. General Ledger;
      3. Cash Disbursement Journal;
      4. Payroll Register;
      5. Time and Attendance Records;
      6. Cumulative Leave Records;
      7. Maintain accounts receivable, accounts payable and equipment ledgers;
      8. Monthly Reconciliation of Bank Accounts;
      9. Monthly Reconciliation of Petty Cash Accounts; and
      10. Monthly Trial Balance.
   3. The Provider further agrees that:
      1. All checks shall be supported by official documentation;
      2. All contract expenditures for service shall be supported by approved documentation; and
      3. Individual Personnel File folders shall be maintained and shall contain all individual personnel actions.
10. **AUDITS:**

**[if federal grants, use this]:**

* 1. The Department requires each of its providers to have an annual audit at its own (Provider’s) expense to coincide with its fiscal year to be performed by an independent audit firm. The Provider must ensure that any independent auditor engaged to perform their Uniform Guidance audit is qualified and meets Generally Accepted Government Auditing Standards (GAGAS) as issued by the Comptroller General of the United States.
     1. If the Provider expends $750,000 or more in federal source funds in its fiscal year, it shall engage at its own expense an independent audit firm to perform an annual audit based on its fiscal year in compliance with the requirements of 2 C.F.R. 200 and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“Uniform Guidance”) as promulgated by the United States Office of Management and Budget (“OMB”).
     2. If the Provider receives less than $750,000 in federal source funds in its fiscal year, it shall engage at its own expense an independent auditor to perform a financial statement audit based on its fiscal year in accordance with 2 C.F.R. 200, Subpart F and Uniform Guidance.
     3. The Provider shall submit an original bound audit report and all management letters in hardcopy and pdf versions to the Department within the nine (9) months after the end of its fiscal year. The Provider shall send the appropriate audit report to the Fiscal Unit of the Department.
     4. Irrespective of the amount of the award and of the particular audit requirements, the Department has the right to perform periodic fiscal and programmatic reviews and audits of the records and books of the Provider. The Department also has the right to request the Baltimore City Department of Audits to perform a review or an audit of the Provider.
  2. The Provider agrees to comply with funding requirements based on the funding source identified in **Exhibit C**.
  3. The Provider shall be responsible for repayment of any and all applicable audit exceptions, which may be identified by City, state, or federal auditors or their designated representatives, and reviewed by the Provider. The Provider will be billed by the Department for the amount of said audit disallowance and shall promptly repay such audit disallowance. In the event of such an audit disallowance, the Department may offset the current fiscal year award or subsequent year award by the amount of such audit disallowance.

**[if local general funds/other funding source, use this]:**

* 1. At any time during business hours and as often as the City may deem necessary, there shall be made available to the City for examination, the Provider’s records with respect to matters covered by this Agreement. The Provider shall permit the City to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, records of personnel, conditions of employment and other data relating to matters covered by this Agreement.

1. **INFRINGEMENT PROTECTIONS:**
   1. The Provider represents and warrants to the City that any concepts, idea, studies, models, presentations, graphics, images, maps, guides, photos, printed materials, reports, brochures, operating manuals, designs, data, electronic files, software, processes, plans, procedures and other materials prepared or used by the Provider in performance of services under this Agreement (the “Property”) do not infringe or otherwise violate any intellectual property right of others, including patent, copyright, trademark, or trade secret.
   2. The Provider agrees to defend at its expense any action brought against the City to the extent based on a claim that the Property violates an intellectual property right. The Provider will pay any costs and damages finally awarded against the City in such action that are attributable to such claim, provided that the City promptly notifies the Provider in writing of the claim (provided, however, that the failure to so notify shall not relieve the Provider of its indemnification obligations), allows the Provider to control the defense, provides the Provider with the information and assistance necessary for the defense and/or settlement of the claim, and does not agree to any settlement without the Provider’s prior written consent. In no event shall the Provider agree to any settlements related to this Agreement without first receiving the City’s written consent.
   3. Should the Property become, or in the Provider’s opinion be likely to become, the subject of any intellectual property claim, the City may at its sole option direct the Provider to (i) procure for the City the right to continue using the Property, (ii) replace or modify the Property so as to make it non-violating, or, if (i) and (ii) are not commercially reasonable, (iii) terminate this Agreement and the City shall be entitled an equitable adjustment in accordance with the Agreement.
2. **WORK FOR HIRE:**
   1. To the extent any graphics, images, maps, guides, photos, printed materials, brochures, operating manuals, designs, data, processes, plans, procedures and information prepared by the Provider in performance of services under this Agreement include material subject to copyright protection, such materials have been specifically commissioned by the City and they shall be deemed “work for hire” as such term is defined under U.S. copyright law. The Provider shall secure a “work for hire” agreement on behalf of the City for any subcontractor who provides materials for this Agreement.
   2. To the extent any of the materials may not, by operation of law, be a work made for hire in accordance with the terms of this Agreement, the Provider hereby assigns to the City all right, title, and interest in and to any intellectual property, and the City shall have the right to obtain and hold in its own name any copyrights, registrations, and other proprietary rights which may be available.
   3. In the event this Section is not applicable, the Provider agrees to grant the City a perpetual enterprise license to the materials produced, prepared, generated, or created in accordance with this Agreement.
3. **CONFIDENTIALITY:**
   1. The Provider agrees that any confidential information received from the City or its personnel in the furtherance of this Agreement shall remain strictly confidential and shall not be made available to any individual or organization without the prior written approval of City or pursuant to applicable federal, state, or local laws. The provisions of this Section shall remain binding upon the Provider after the expiration or earlier termination of this Agreement.
   2. The Provider shall comply with all applicable federal and state confidentiality requirements regarding personal information, including Md. Code Ann. State Gov. §10-1301 et seq.
   3. As required under the Maryland Public Information Act, the Provider shall implement and maintain reasonable security procedures and practices that are appropriate to the nature of the personal information disclosed to the Provider by the City or other government agencies and which are reasonably designed to help protect the personal information from unauthorized access, use, modification, disclosure, or destruction.
   4. If the Provider becomes aware of any unauthorized access to, disclosure of, use of, or damage to the confidential information, the Provider shall within forty-eight (48) hours notify the City of all facts known to it concerning such unauthorized access, disclosure, use, or damage. Additionally, the Provider shall use diligent efforts to remedy such breach of security or unauthorized access that is caused by or attributed to the Provider or its officers, directors, employees, subcontractors, agents, or volunteers in a timely manner, be responsible for any remedial measures required by statute, assist and cooperate with the City in any litigation against third parties that the City undertakes to protect the security and integrity of the confidential information, and deliver to the City, if requested, the root cause assessment and future incident mitigation plan with regard to any such breach of security or unauthorized access. The Provider shall comply with all applicable U.S. and international laws governing or relating to privacy, data security and the handling of data security breaches.

**[include the following as applicable, if 13.6 is not applicable, be sure to delete Exhibit E – Business Associate Agreement]:**

* 1. The Provider shall comply with all applicable federal and state confidentiality requirements regarding the collection, maintenance, use and disclosure of health information. This includes, where appropriate, (1) the Health Insurance Portability and Accountability (HIPAA) Act of 1996 (42 U.S.C. § 1320d et seq. and implementing regulations at 45 CFR parts 160 and 164) as amended, (2) the Confidentiality of Alcohol and Drug Abuse Patient Records (42 U.S.C. 290dd-2, as implemented at 42 C.F.R. part 2) as amended; and (3) the Maryland Confidentiality of Medical Records Act (Md. Code Ann. Health-General § 4-301 et seq.) as amended.
  2. The parties have executed the attached Business Associate Agreement intending the effective date thereof to be the Effective Date of this Agreement, attached hereto as **Exhibit E** and incorporated herein. Additionally, the Business Associate Agreement is hereby incorporated into this Agreement for the purpose of protecting the personal health information pursuant to this Agreement in compliance with federal, state, and/or local laws, codes, and regulations, now in effect and hereafter adopted.
  3. As applies to Baltimore Infants and Toddlers Program records and School Health Suite records, the Provider shall comply with all applicable federal and state confidentiality requirements regarding the collection, maintenance, use and disclosure of information from education records in accordance with the Family Educational Rights and Privacy Act (20 U.S.C. §1232g and 34 CFR Part 99) and policies on School Health Suite records of the Baltimore City School Board available through the Baltimore City Public Schools Family Handbook and Directory available through the website [http://www.baltimoreCityschools.org/](http://www.baltimorecityschools.org/) or the Baltimore City Public Schools Office of Legal Counsel 410-984-2000.

1. **PUBLICATION:**
   1. Prior to any advertising, publicity, or promotional materials initiated by the Provider relating to the services under this Agreement, the Provider shall obtain prior written approval regarding such promotional materials from the City before such materials can be released. Materials shall be presented to the City for prior written approval and shall be returned to the Provider in a timely manner. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.
2. **MODIFICATIONS AND AMENDMENTS:**
   1. Any and all modifications, alterations, or amendments to the provisions of this Agreement must be by means of a written amendment that refers to and incorporates this Agreement, is duly executed by an authorized representative of each party, and is approved by the Board. No modifications, alterations, or amendments of this Agreement are valid and enforceable unless the above requirements have been satisfied.
3. **COMPLIANCE WITH LAWS:**
   1. The Provider hereby represents, warrants, covenants, and agrees that:
      1. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
      2. The Provider’s name in this Agreement is its full legal name;
      3. It has the requisite corporate power (if applicable), authority and legal capacity to enter into this Agreement and fulfill its obligations hereunder;
      4. The execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body (if applicable);
   2. During the Term, it will comply with all federal, state and local laws, ordinances, rules and regulations, including interim expenditure and annual report requirements, and applicable codes of ethics pertaining to or regulating the services to be performed pursuant to this Agreement, including those now in effect and hereafter adopted;
      1. There are no suits or proceedings pending or threatened, whether in law or in equity, to the best of the Provider’s knowledge, which if adversely determined, would have a material adverse effect on the financial condition or business of the Provider; and
      2. It has obtained, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to perform its obligations under this Agreement.
   3. The Provider’s violation of the above representations and warranties shall entitle the City to terminate this Agreement immediately upon delivery of written notice of termination to the Provider.
4. **CRIMINAL BACKGROUND CHECKS:**
   1. The Provider covenants and agrees that it and its subcontractors will conduct a criminal background check of all of its employees, agents, and volunteers prior to commencing work under this Agreement. All costs of the criminal background check shall be borne by Provider or its subcontractors. As applicable pursuant to Md. Code Ann. Family Law Article, §5-550 et seq., the Provider and its subcontractors shall obtain criminal history records checks of employees, agents, and volunteers who shall provide services to minors under this Agreement. In any case where a criminal record is reported, the Provider and its subcontractors shall be responsible for taking immediate and appropriate action to protect the safety and welfare of any and all persons (especially minors, seniors, and people with disabilities or mental illness) having contact with that individual.

**[include this as applicable]:**

* 1. If any of the services of the Provider under this Agreement occur on the grounds of a public or nonpublic school, the Provider shall comply with the Md. Code Ann. Criminal Procedure Article, § 11-722 that states that a person who enters a contract with a county board of education or a nonpublic school may not knowingly employ an individual to work at a school if the individual is a registered child sex offender.

1. **DISPUTES:**
   1. The City shall in all cases, determine the amount or quantity, quality, and acceptability of the work and expenses which are to be paid under this Agreement; shall decide all questions in relation to said work and the performance thereof, and; shall, in all cases, decide questions which may arise relative to the fulfillment of this Agreement or to the obligations of the Provider thereunder. To prevent disputes and litigation where the Provider is not satisfied with the decision of the City, the Provider shall submit the claim to the head of the City agency (or his/her designee), who will decide any dispute between the Provider and the City, and the head of the City agency’s determination, decision and/or estimate shall be a condition precedent to the right of the Provider to receive any monies under this Agreement, and is subject to review on the record by a court of competent jurisdiction.
2. **CITY REQUIREMENTS:**
   1. Nondiscrimination.
      1. The Provider shall operate under this Agreement so that no person otherwise qualified is denied employment or other benefits on the grounds of race, color, religion, ancestry, national origin, ethnicity, sex, age, marital status, sexual orientation, gender identity or expression, disability, genetic information or other unlawful forms of discrimination except where a particular occupation or position reasonably requires consideration of these attributes as an essential qualification for the position. The Provider shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
      2. The Provider shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, gender identity or expression, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers. The Provider shall provide equal opportunity for subcontractors to participate in all of its public sector and private sector subcontracting opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace, such as those specified in Article 5, Subtitle 28 of the Baltimore City Code, as amended from time to time. The Provider understands and agrees that violation of this clause is a material breach of this Agreement and may result in contract termination, debarment, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
      3. Upon the City’s request, and only after the filing of a complaint against the Provider pursuant to Article 5, Subtitle 29, of the Baltimore City Code, as amended from time to time, the Provider agrees to provide the City, within 60 calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Provider has used in the past four (4) years on any of its contracts that were undertaken with the Baltimore City Market Area as defined in Article 5, §28-1(d) of the Baltimore City Code, as amended from time to time, including the total dollar amount paid by the Provider for each subcontract or supply contract. The Provider agrees to fully cooperate in any investigation conducted by the City pursuant to the City’s Commercial Non-Discrimination Policy, as contained in Article 5, Subtitle 29, of the Baltimore City Code as amended from time to time. The Provider understands and agrees that violation of this clause is a material breach of this Agreement and may result in contract termination, debarment, and other sanctions.
   2. MBE/WBE. The requirements of the Baltimore City Code, Article 5, Subtitle 28 (pertaining to Minority and Women’s Business Enterprise), as amended, are hereby incorporated by reference into this Agreement. If applicable, failure of the Provider to comply with this subtitle shall constitute a material breach of this Agreement and shall entitle the City to terminate this Agreement immediately upon delivery of written notice of termination to the Provider. The Provider will make good faith efforts to utilize minority and women’s business enterprises and maintain records reasonably necessary for monitoring compliance with this subtitle. *(See Art. 5, § 28-54, Baltimore City Code)*
   3. Local Hiring. Article 5, Subtitle 27 of the Baltimore City Code, as amended (the “Local Hiring Law”) and its rules and regulations apply to every contract for more than $300,000 made by the City, or on its behalf, with any person. The Local Hiring Law also applies to every agreement authorizing assistance valued at more than $5,000,000 to a City-subsidized project. Please visit www.oedworks.com for detailed on the requirements of the law. If applicable, the Local Hiring Law and the Local Hiring Rules and Regulations shall be attached hereto as **Exhibit D** and incorporated herein.
   4. Conflict of Interest. No elected official of the City, nor other officer, employee or agent of the City who exercises any functions or responsibilities in connection with this Agreement, shall have any personal interest, direct or indirect, in this Agreement. By executing this Agreement, the Provider asserts that it has not engaged in any practice or entered into any past or ongoing agreement that would be considered a conflict of interest with this Agreement. The Provider agrees to refrain from entering into all such practices or agreements during the Term of this Agreement (and any extensions thereto) that could give rise to a conflict of interest. Furthermore, the Provider asserts that it has fully disclosed to the City any and all practices and/or agreements of whatever nature or duration that could give rise to a conflict of interest and will continue to do so during the Term of this Agreement and any extensions thereto.
   5. Unfair Labor Practices. Notwithstanding any other provisions in instant Agreement, the Provider shall comply with the terms of the Board of Estimates of Baltimore City Resolution dated June 29, 1994 (if applicable) which states as follows:
      1. Providers, contractors, subcontractors, their agents and employees may not engage in unfair labor practices as defined under the National Labor Relations Act and applicable federal regulations and state laws.
      2. Providers, contractors, subcontractors, and their agents may not threaten, harass, intimidate or in any way impede persons employed by them who on their own time exercise their rights to associate, speak, organize, or petition governmental officials with their grievance.
      3. If the Board determines that a provider, contractor, subcontractor, or their agents have violated the policy set forth in this Resolution said provider, contractor, or subcontractor will be disqualified from bidding on City contracts, and if they are currently completing contracts, they will be found in default of their contracts.
   6. No Dumping. The Provider’s violation of any provision of City Health Title 7 {“Waste Control”}, Subtitle 6 {“Prohibited Disposal”}, constitutes a breach of this Agreement; and the City may determine, in its discretion, whether the violation is a material breach warranting termination of this Agreement.
3. **STATE REQUIREMENTS:**
   1. **Political Contribution Disclosure.** The Provider is aware of, and will comply with all applicable provisions of the Maryland Annotated Code, Election Law Article, §14-101 et seq., “Disclosure By Persons Doing Public Business”, (“Election Law”). The Provider certifies, in accordance with §14-107 of the Election Law, that it has filed the statement required under §14-104(b)(1) of the Election Law.
4. **MISCELLANEOUS PROVISIONS:**
   1. No Waiver. A party’s failure to insist on compliance or enforcement of any provision of this Agreement shall not affect its validity or enforceability or constitute a waiver of future enforcement of that provision or of any other provision of this Agreement.
   2. Severability. Each provision of this Agreement shall be deemed to be a separate, severable, and independently enforceable provision. The invalidity or breach of any provision shall not cause the invalidity or breach of the remaining provisions or of this Agreement, which shall remain in full force and effect.
   3. Governance.
      1. This Agreement is made in the State of Maryland and shall be governed by the laws of the State of Maryland, including the applicable statute of limitations, without regard to the conflict of law rules.
      2. The legal venue of this Agreement and any disputes arising from it shall be settled in Baltimore City, Maryland. The Provider hereby irrevocably waives any objections and any right to immunity on the ground of venue or the convenience of the forum, or to the jurisdiction of such courts or from the execution of judgments resulting therefrom.
   4. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective personal and legal representatives, successors, guardians, heirs and permitted assigns of the parties hereto and all persons claiming by and through them.
   5. Agency. Nothing herein contained shall be construed to constitute any party the agent, servant or employee of the other party, except as specifically provided in this Agreement. No party has the authority to act as an agent of the other party except as specifically provided in this Agreement.
   6. Notice.
      1. All notices, requests, claims, demands and other communications required or permitted under this Agreement (collectively, “Notices”) shall be in writing and be given (i) by delivery in person, (ii) by a nationally recognized next day courier service, (iii) by registered or certified mail, postage prepaid, to the address of the party specified in this Agreement or such other address as either party may specify in writing to the following:

|  |  |
| --- | --- |
| **FOR THE CITY:**  Director’s Name, Title  Name of Department/Agency  Address  City, State Zip Code  Email | **FOR THE PROVIDER:**  Provider’s Legal Name  Title  Address  City, State Zip Code  Email |

* + 1. All Notices shall be effective upon receipt by the party to which notice is given.
  1. Payment to the City. Any payment(s) to the City or any of its Departments, Agencies, Boards or Commissions due under the terms of this Agreement or arising incident thereto shall be made to the Director of Finance and be mailed or delivered to: Director of Finance c/o Bureau of Revenue Collections Abel Wolman Municipal Building 200 N. Holliday Street Baltimore, MD 21202. Wiring instructions may be obtained from the Bureau of Treasury Management.
  2. Non-Hiring of Officials and Employees. The Provider agrees that no official or employee of the City, whose duties as such official or employee include matters relating to or affecting the subject matter of this Agreement, shall during the pendency and terms of this Agreement and while serving as an official or employee of the City become or be an employee of the Provider or any entity that is a subcontractor of the Provider on this Agreement.
  3. Gender. Words of gender used in this Agreement may be construed to include any gender; words in the singular may include the plural of words, and vice versa.
  4. Headings. Any heading of the paragraphs in this Agreement is inserted for convenience and reference only, and shall be disregarded in construing and/or interpreting this Agreement.
  5. Multiple Copies. This Agreement may be executed in any number of copies and each such copy shall be deemed an original.
  6. Recitals. The recitals are hereby incorporated as part of this Agreement.
  7. Survival. The representations, warranties, covenants promises and agreements contained in this Agreement shall survive the execution and consummation of this Agreement, and shall continue until the applicable statute of limitations shall have barred any claims thereon.
  8. Interpretation. In the event of an ambiguity or question as to the meaning of any provision of this Agreement, or a conflict, or inconsistency between similar terms, conditions, or language between or within this Agreement and the provisions of any exhibit or schedule attached hereto or any document referred to herein, the interpretation placed thereon by the City shall be final and binding on the parties hereto, provided that any such interpretation shall not be unreasonable.
  9. Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
  10. Independent Contractor.
      1. It is agreed by the parties that at all times and for all purposes hereunder that the Provider is not an employee of the City. No statement contained in this Agreement shall be construed so as to find the Provider or any of its employees, subcontractors, servants, or agents to be employees of the City, and they shall be entitled to none of the rights, privileges, or benefits of employees of the City.
      2. The Provider warrants that individual(s) performing work under this Agreement shall be employee(s) of the Provider for all purposes, including but not limited to unemployment insurance, tax withholdings, workers’ compensation coverage as required by applicable federal and state law.
  11. Contingent Fee Prohibition. The Provider warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Provider to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Agreement.
  12. Assignability/Subcontracting. The Provider shall not assign, transfer, or subcontract any part of this Agreement without the prior written consent of the City, which shall not be unreasonably withheld.
  13. Further Assurances. Each party shall cooperate with the other and execute such instruments or documents and take such other actions as may reasonably be requested from time to time in order to carry out, evidence or confirm their rights or obligations or as may be reasonably necessary or helpful to give effect to this Agreement. Furthermore, the Provider agrees to comply with the City’s Electronic Communications Policy and will execute the Acknowledgment of Electronic Communications Policy (AM-118-1-1) prior to commencing any work pursuant to this Agreement, if applicable.
  14. Force Majeure. Neither party will be liable for its non-performance or delayed performance if caused by a “Force Majeure” which means an event, circumstance, or act of a third party that is beyond a party’s reasonable control, such as an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, or any other similar cause. Each party will notify the other if it becomes aware of any Force Majeure that will significantly delay performance. The notifying party will give such notice promptly (but in no event later than fifteen (15) calendar days) after it discovers the Force Majeure. If a Force Majeure occurs, the parties may modify this Agreement in accordance with the requirements herein.
  15. Entire Agreement. This Agreement constitutes the entire, full and final understanding between the parties hereto and neither party shall be bound by any representations, statements, promises or agreements not expressly set forth herein. The parties do not intend to sign this Agreement under seal and hereby agree to impose the standard statute of limitations on this Agreement.
  16. Null and Void. Should this Agreement not be approved by the Board, it shall be considered null and void.
  17. Pre-existing Regulations. Any procurement regulations approved by the Board that are in effect on the date of execution of this Agreement are applicable to this Agreement.

**[Signature Page Follows]**

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement on the day and year first above written.

**ATTEST MAYOR AND CITY COUNCIL OF BALTIMORE**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Custodian of the City Seal Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**WITNESS PROVIDER’S LEGAL NAME**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Seal)

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPROVED AS TO FORM APPROVED BY THE BOARD OF ESTIMATES**

**AND LEGAL SUFFICIENCY**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Assistant Solicitor Clerk Date

Being page of an Agreement by and between the Mayor and City Council of Baltimore and the Provider.

**EXHIBIT A**

**SCOPE OF SERVICES**

The Provider shall perform the following services in accordance with this Agreement:



**EXHIBIT B**

**ESTIMATED PROJECT BUDGET**

| Line Item | Description | Year 20\_\_\_ Estimated Funding |
| --- | --- | --- |
| 1 |  |  |
|  | **Total:** | **$\_\_\_\_\_\_\_\_** |

**EXHIBIT C**

**FUNDING SOURCE IDENTIFICATION**

|  |  |  |  |
| --- | --- | --- | --- |
| **Source of Funding:** | **Federal** | **State** | **City** |
| **Name of Awarding Agency:** |  |  |  |
| **Award Title:** |  |  |  |
| **Award Id. #:** |  |  |  |
| **CFDA Id. #:** |  |  |  |
| **Term of Award:** |  |  |  |
| **Award Amount:** |  |  |  |
| **City Account #:** |  |  |  |

1. The Provider acknowledges that the funding of this Agreement is from federal, state, and/or City funds. The identification of the source of funding is indicated above. As applicable, the Provider shall comply with the requirements of the funding source, including but not limited to the terms and conditions of the notice of grant award, statutes and regulations, and manuals.

2. As applicable, the Provider shall comply with the assurances and certifications, which are attached hereto and incorporated herein.

3. The Provider agrees to accept any additional conditions governing the use of funds or performance of programs as may be required by executive order, federal, state or local statute, ordinance, rule or regulation or by policy announced by the City. However, should the Provider find such additional condition or conditions unacceptable, the Provider may terminate this Agreement upon thirty (30) days written notice.

**EXHIBIT D**

**THE LOCAL HIRING LAW**

**AND THE LOCAL HIRING RULES AND REGULATIONS**

*Attach if applicable.*

**EXHIBIT E**

**\_\_\_\_\_\_\_\_\_\_ Department**

**Business Associate Agreement**

This Business Associate Agreement (the "Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_ 201\_\_ by and between the Mayor and City Council of Baltimore, a political subdivision of the State of Maryland, acting by and through its \_\_\_\_\_\_\_\_\_ (the Department) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Provider).

**WHEREAS**, the City and the Provider have entered into a contractual agreement attached to this Agreement awarded by the Board of Estimates of Baltimore City on the Effective Date specified therein (the “Primary Contract”) under which the Provider may have access to health information protected under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”);

**WHEREAS**, HIPAA requires that a Provider given access to health information protected under HIPAA also enter a Business Associate Agreement;

**NOW THEREFORE,** in consideration of the mutual promises contained herein and for other good and valuable consideration, including the mutual reliance of the parties on compliance with the terms and conditions of this Agreement, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **DEFINITIONS**
   1. The terms used in this Agreement (e.g., Individual(s), Report, Required by Law, and Security Incident) have the same meaning as set forth in the HIPAA Regulations at 45 C.F.R. Parts 160 and 164, as they may be amended from time to time and as set forth in B. below.
   2. Specific definitions:
      1. “Breach” means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Regulations and which compromises the security or privacy of the PHI (45 C.F.R. § 164.402).
      2. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 C.F.R. § 160.103, and in reference to the party to this Agreement, shall mean the PROVIDER.
      3. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 C.F.R. § 160.103, and in reference to the party to this Agreement, shall mean the Department.
      4. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. Parts 160 and 164, as amended from time to time.
      5. "HIPAA Regulations" mean the Privacy, Security, Breach   
         Notification, and Enforcement Regulations at 45 C.F.R. Parts 160 and 164.
      6. “MCMRA” means the Maryland Confidentiality of Medical Records Act, Md. Code Ann., Health-General, §4-301 et seq. as amended from time to time.
      7. Protected Health Information or "PHI" shall generally have the same meaning as the term "protected health information" at 45 C.F.R. § 160.103.
      8. “Secretary” means the Secretary of the Department of Health and Human Services or his designee.
      9. “Unsecured PHI” means PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance.
2. **PERMITTED USES AND DISCLOSURES OF PHI BY PROVIDER**
   1. Provider may only use or disclose PHI as necessary to perform the services set forth in the Primary Contract or as required by law.
   2. Provider agrees to make uses and disclosures and requests for PHI consistent with the Department's policies and procedures regarding minimum necessary use of PHI.
   3. Provider may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by the Department.
   4. Provider may, if directed to do so in writing by the Department, create a limited data set, as defined at 45 C.F.R. § 164.514(e)(2), for use in public health, research, or health care operations. Any such limited data sets shall omit any of the identifying information listed in 45 C.F.R. § 164.514(e)(2). Provider will enter into a valid, HIPAA-compliant Data Use Agreement, as described in 45 C.F.R. § 164.514(e)(4), with the limited data set recipient. Provider will report any material breach or violation of the data use agreement to the Department immediately after it becomes aware of any such material breach or violation.
   5. Except as otherwise limited in this Agreement, Provider may disclose PHIfor the proper management and administration, or legal responsibilities of the Provider, provided that disclosures are Required By Law, or Provider obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Provider of any instances of which it is aware in which the confidentiality of the information has been breached.
   6. The Provider shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual pursuant to §§13405(d)(1) and (2) of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”). This prohibition does not apply to the Department's payment of Provider for its performance pursuant to the Primary Contract.
   7. The Provider shall comply with the limitations on marketing and fundraising communications provided in §13406 of the HITECH Act in connection with any PHI of Individuals.
   8. The Provider shall comply with an individual’s request to restrict disclosure of PHI if the information pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full as provided in §13405(a)(2) of the HITECH Act.
   9. If the Provider uses or maintains an electronic health record with respect to the PHI of an individual, the Provider shall provide a copy of such information in an electronic format as provided in §13405(e) of the HITECH Act.
3. **DUTIES OF PROVIDER RELATIVE TO PHI**
   1. Provider agrees that it will not use or disclose PHI other than as permitted or required by the Agreement or as required by law.
   2. Provider agrees to use appropriate administrative, technical and physical safeguards to protect the privacy of PHI.
   3. Provider agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement.
   4. Provider agrees to Report to the Department any use or   
      disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware without reasonable delay, and in no case later than fifteen calendar days after the use or disclosure.
   5. If the use or disclosure amounts to a breach of Unsecured PHI, the Provider shall ensure its report:
      1. is made to the Department without unreasonable delay and in no case later than fifteen (15) calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this Section III.E.1, Provider must notify the Department of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 C.F.R. Part E within fifteen (15) calendar days after an incident even if Provider has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;
      2. includes the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
      3. is in substantially the same form as the ATTACHMENT hereto; and
      4. includes a draft letter for the Department to utilize to notify the affected Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:
         1. a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
         2. a description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
         3. any steps the affected Individuals should take to protect themselves from potential harm resulting from the Breach;
         4. A brief description of what the Department and the Provider are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
         5. Contact procedures for the affected Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website, or postal address.
   6. To the extent permitted by the Primary Contract, Provider may use agents and subcontractors. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), Provider shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Provider agree to the same restrictions, conditions, and requirements that apply to the Provider with respect to such information. Provider must enter into Business Associate Agreements with subcontractors as required by HIPAA.
   7. Provider agrees it will make available PHI in a designated record set to the Department, or, as directed by the Department, to an individual, as necessary to satisfy the Department's obligations under 45 C.F.R. § 164.524, including, if requested, a copy in electronic format.
   8. Provider agrees it will make any amendment(s) to PHI in a designated record set as directed or agreed to by the Department pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy the Department's obligations under 45 C.F.R. § 164.526.
   9. Provider agrees to maintain and make available the information required to provide an accounting of disclosures to the Department or, as directed by the Department, to an individual, as necessary to satisfy the Department's obligations under 45 C.F.R. § 164.528.
   10. To the extent the Provider is to carry out one or more of the Department's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Department in the performance of such obligation(s).
   11. Provider agrees to make its internal practices, books, and records, including PHI, available to the Department and/or the Secretary for purposes of determining compliance with the HIPAA Regulations.
   12. Provider agrees to mitigate, to the extent practicable, any harmful effect that is known to Provider of a use or disclosure of PHI by Provider in violation of the requirements of this Agreement.
4. **TERM AND TERMINATION**
   1. This Agreement shall remain in effect unless otherwise terminated for the entire term of the Primary Contract including any extensions, options or modifications, or, as appropriate, in accordance with the requirements of paragraph (C) of this subsection.
   2. Upon the Department’s knowledge of a material breach by Provider, the Department will either:
      1. Provide an opportunity for the Provider to cure the breach or end the violation and terminate this Agreement if the Provider does not cure the breach or end the violation within the time specified by the Department;
      2. Immediately terminate this Agreement if the Provider has breached a material term of this Agreement and cure is not possible; or
      3. If neither termination nor cure is feasible, report the violation to the Secretary.
   3. Effect of Termination.
      1. Upon termination of this Agreement for any reason, the Provider shall return or, if agreed to by the Department, destroy and document the destruction of all PHI received from the Department, or created or received by the Provider on behalf of the Department that the Provider still maintains in any form. Provider shall retain no copies of the PHI. This provision shall also apply to PHI that is in the possession of subcontractors or agents of the Provider.
      2. If the Provider believes that returning or destroying the PHI is infeasible, the Provider shall provide to the Department notification of the conditions that make return or destruction infeasible. If the Department agrees that return or destruction of PHI is infeasible, the Provider shall extend the protections of this Agreement to the PHI and limit further uses and disclosures of the PHI to those purposes that make the return or destruction infeasible, for so long as the Provider maintains the PHI.
      3. Should Provider make an intentional or grossly negligent in violation of this Agreement or HIPAA or an intentional or grossly negligent disclosure of information protected by the MCMRA, the Department shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Primary Contract.
   4. The obligations of Provider under this Section shall survivethe termination of this Agreement.
   5. If Provider breaches any of the covenants and assurance in this Agreement, the Department will suffer irreparable harm. Consequently, Provider agrees that the Department may enjoin and restrain Provider from any continued violation of this Agreement, and to reimburse and indemnify the Department for its reasonable attorney’s fees and expenses and costs reasonably incurred as a proximate result of Provider’s breach. These remedies are in addition to and do not supersede any action for damages and/or any other remedy.
   6. This Agreement may only be modified or amended through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Department to comply with the requirements of the HIPAA Regulations and any other applicable law.
5. **INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES**
   1. Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.
6. **NOTICE PROVISIONS** 
   1. Any notice required or permitted under this Agreement shall be in writing and hand delivered with receipt obtained therefore, or mailed, postage pre-paid, to the other parties by certified mail, return receipt requested to the following:

|  |  |
| --- | --- |
| **FOR THE DEPARTMENT:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **FOR THE PROVIDER:**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

1. **COMPLIANCE WITH STATE LAW**
   1. The Provider acknowledges that by accepting the PHI from the Department, it becomes a holder of medical records information under the MCMRA and is subject to the provisions of that law. If the HIPAA Regulations and the MCMRA conflict regarding the degree of protection provided for PHI, the Provider shall comply with the more restrictive protection requirement.
2. **MISCELLANEOUS**
   1. A reference in this Agreement to HIPAA or the HIPAA Regulations or a section of either means HIPAA or the HIPAA Regulations or the section as in effect or as amended from time to time.
   2. The Parties agree to take such action in writing to amend this Agreement from time to time as is necessary for the Department to comply with the requirements of the HIPAA Regulations and HIPAA.
   3. Any ambiguity in this Agreement shall be resolved to permit the Department to comply with the HIPAA Regulations.
   4. The parties agree that this Agreement shall not be assignable, except by written approval, in advance by the Department.
   5. This Agreement is made in the State of Maryland and shall be governed by the laws of the State of Maryland, exclusive of its conflict of law rules. Furthermore, the parties agree that any suits or actions brought by either party against the other shall be filed in a court of competent jurisdiction in Baltimore City.
   6. Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this agreement shall survive termination or expiration of this Agreement and continue in full force and effect.
   7. If any term contained in this Agreement is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Agreement, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
   8. All of the terms of this Agreement are contractual and not merely recitals and none may be amended or modified except by a writing executed by all parties hereto.
   9. This Agreement supersedes and renders null and void any and all prior written or oral undertakings or agreements between the parties regarding the subject matter hereof.
   10. This Agreement constitutes the entire, full and final understanding between the parties hereto and neither party shall be bound by any representations, statements, promises or agreements not expressly set forth herein.
   11. Should any conflict exist between the language of this Agreement and the Primary Contract, the language of this Agreement shall prevail unless at some time in the future the parties specifically refer to this Agreement and explicitly otherwise provide.

**IN WITNESS WHEREOF**, the parties hereby evidence their agreement to the above terms and conditions by having caused this Agreement to be executed and delivered the day and year first above written.

**ATTEST MAYOR AND CITY COUNCIL OF BALTIMORE**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**WITNESS PROVIDER’S LEGAL NAME**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Seal) Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ATTACHMENT TO BAA**

**FORM OF NOTIFICATION TO THE DEPARTMENT**

**OF BREACH OF UNSECURED PHI**

This notification is made pursuant to Section III.E.(3) of the Business Associate Agreement between the Mayor and City Council of Baltimore, a political subdivision of the State of Maryland, acting by and through its Baltimore City Health Department (Department) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Provider).

Provider hereby notifies Department that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Provider has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date of the breach: \_\_\_\_\_\_\_\_\_\_\_\_\_Date of discovery of the breach: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Does the breach involve 500 or more individuals? Yes/No

If yes, do the people live in multiple states? Yes/No

Number of individuals affected by the breach: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Names of individuals affected by the breach: (attach list)

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Description of what Provider is doing to investigate the breach, to mitigate losses, and to protect against any further breaches:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact information to ask questions or learn additional information:

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_